

EXHIBIT “B”

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 In Re:

4 CUSTOMS AND TAX ADMINISTRATION
5 OF THE KINGDOM OF DENMARK (SKAT)
6 TAX REFUND LITIGATION

18 MD 2865 (LAK)

7 -----x

8 November 20, 2018
9 9:30 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13 APPEARANCES

14 HUGHES HUBBARD & REED LLP
15 Attorneys for Plaintiff SKAT

16 BY: MARC A. WEINSTEIN
17 WILLIAM R. MAGUIRE
18 SARAH L. CAVE
19 NEIL J. OXFORD

20 CAPLIN & DRYSDALE, CHARTERED
21 Attorneys for The Bradley London Pension Plan
22 and Doston Bradley

23 BY: MARK D. ALLISON
24 ZHANNA A. ZIERING

25 WILLIAMS & CONNOLLY
Attorneys for Sander Gerber Pension Plan
BY: AMY McKINLAY

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APPEARANCES (Cont'd)

MORVILLO, ABRAMOWITZ, GRAND, IASON & ANELLO P.C.
Attorneys for Adam LaRosa

BY: EDWARD M. SPIRO

GUSRAE, KAPLAN, NUSBAUM, PLLC
Attorneys for Goldstein Defendants

BY: MARTIN H. KAPLAN

DEWEY PEGNO & KRAMARSKY
Attorneys for Defendant Ben-Jacob

BY: THOMAS E.L. DEWEY

KATTEN MUCHIN ROSENMAN LLP
Attorneys for Defendant Klugman

BY: DAVID L. GOLDBERG

KOSTELANETZ & FINK, LLP
Attorneys for John Doscas, David Freelow and
Sterling Alpha Plan and Delmar Plan

BY: ERIC SMITH
JULIET L. FINK

JOHN M. HANAMIRIAN
Attorneys for Acorn Summer, Gregory Summers,
Acron Nowell and Shree Shaw

K&L GATES LLP
Attorneys for DW Construction, Inc. Retirement Plan
BY: JOHN C. BLESSINGTON

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1 (Case called)

2 THE DEPUTY CLERK: Counsel for plaintiff SKAT, are you
3 ready?

4 MR. WEINSTEIN: Yes. Good morning, your Honor. Marc
5 Weinstein, Bill Maguire, Sarah Cave, and Neil Oxford from
6 Hughes Hubbard & Reed.

7 THE COURT: Good morning.

8 THE DEPUTY CLERK: For Defendants Bradley London
9 Pension Plan and Doston Bradley, are you ready?

10 MR. ALLISON: Yes. Good morning, your Honor. Mark
11 Allison, Caplin & Drysdale, on behalf of the plan and dozens
12 others as you know.

13 THE COURT: Yes.

14 THE DEPUTY CLERK: Defendant Sander Gerber Pension
15 Plan, are you ready?

16 MS. MCKINLAY: Yes. Good morning, your Honor. Amy
17 McKinlay from Williams & Connolly.

18 THE DEPUTY CLERK: Defendant Adam LaRosa, are you
19 ready?

20 MR. SPIRO: Edward Spiro of Morvillo, Abramowitz,
21 Grand, Iason & Anello. Good morning, your Honor.

22 THE COURT: Good morning.

23 THE DEPUTY CLERK: Defendant Goldstein Law Group
24 401(k) Profit Sharing Plan and Sheldon Goldstein, are you
25 ready?

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1 MR. KAPLAN: Ready. Martin H. Kaplan, Gusrae Kaplan,
2 Nusbaum, PLCC, for the Goldstein defendants.

3 Good morning, your Honor.

4 THE COURT: Good morning.

5 THE DEPUTY CLERK: Defendant Michael Ben-Jacob, are
6 you ready?

7 MR. DEWEY: Yes. Tom Dewey for Mr. Ben-Jacob.

8 THE COURT: Good morning.

9 THE DEPUTY CLERK: Defendant Robert Klugman, are you
10 ready?

11 MR. GOLDBERG: Good morning, your Honor. David
12 Goldberg from Katten Muchin.

13 THE COURT: Good morning.

14 THE DEPUTY CLERK: Defendant John Doscas, David
15 Freelow, and the Sterling Alpha Plan and Delmar Plan, are you
16 ready?

17 MR. SMITH: Yes, your Honor. Eric Smith, Kostelanetz
18 & Fink, and Juliet Fink.

19 THE COURT: Good morning.

20 THE DEPUTY CLERK: Defendant Acorn Summers, Greggory
21 Summers, Acron Nowell, and Shree Shaw, are you ready?

22 MR. HANAMIRIAN: I am, your Honor. John Hanamirian.

23 THE COURT: Good morning.

24 THE DEPUTY CLERK: Defendant DW Construction, Inc.
25 Retirement Plan, are you ready?

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1 MR. BLESSINGTON: I am. Good morning, your Honor.
2 John Blessington, on behalf of that plan, six others from Utah,
3 and one from Pennsylvania.

4 THE COURT: Geographical distribution.

5 OK. Well, I think it probably makes sense to hear
6 from Mr. Hanamirian first. And, in particular, Mr. Hanamirian,
7 why do we need more than one lead counsel in this case?

8 MR. HANAMIRIAN: You want me at the podium, your
9 Honor?

10 THE COURT: Yes.

11 MR. HANAMIRIAN: I think, your Honor, without getting
12 into the entirety of the specifics down the road, I have been
13 dealing with similar claims on behalf of different nations
14 since 2012. So this type of investment, this cum-ex trade type
15 of investments has been the subject of inquiry, both civil and
16 criminal, in other jurisdictions.

17 THE COURT: This type of investments, is that what you
18 said?

19 MR. HANAMIRIAN: I did.

20 THE COURT: What do you mean by that?

21 MR. HANAMIRIAN: This type of investment structure,
22 this cum-ex trading structure that underlies the allegations of
23 fraud in this matter.

24 THE COURT: Maybe you can explain that to me.

25 MR. HANAMIRIAN: That's been a challenge for a lot of

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1 people, your Honor. But the type of investment itself and the
2 trading structure itself has been the subject of, as I said,
3 inquiry in a number of jurisdictions over the past six or so
4 years. So I have been dealing with --

5 THE COURT: What is the trading structure? What are
6 you talking about? I don't have any idea what you're talking
7 about.

8 MR. HANAMIRIAN: That's why I say I think that the
9 analysis and the discussion of that might be premature given
10 the plaintiff's burden in the case. So if I go through and
11 provide testimony in this context, I think it might not be
12 appropriate. I know you're looking at me askance, but the
13 underlying structure, the investment structure, how it came
14 about and the components to it are probably a piece of the
15 assertion with respect to fraud. And so my articulation of it
16 probably is relatively meaningless. It more depends upon the
17 actual structure as articulated potentially by any of the
18 defendants.

19 So my understanding of the investment vehicle itself,
20 or of cum-ex trading, is one thing. The assertions in this
21 case with respect to fraud or with respect to other wrongful
22 conduct are another thing.

23 THE COURT: Well, if the objective of your remarks was
24 to explain to me why we should have more than one lead counsel,
25 swung out and missed. If you don't want to explain to me what

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1 the facts are that in your view make it appropriate to have
2 more than one lead counsel I don't see a need for it.

3 MR. HANAMIRIAN: I think there are certain persons
4 within the defendant group who might have different issues with
5 respect to the defense of the claims. So going down a path on
6 a singular defense theory, this situation is unlike a class
7 action where you have multiple pharmaceutical companies and you
8 say, OK, we are all in, and it's just a factor of allocation of
9 responsibility and anybody can really do that. I have
10 international Fifth Amendment-type concerns that I have to
11 address with respect to one or more of my clients. I have the
12 effect of an international Fifth Amendment or a domestic United
13 States proceeding that I have to address.

14 THE COURT: What is an international Fifth Amendment
15 claim?

16 MR. HANAMIRIAN: If you have a Fifth Amendment or an
17 equivalent right in another jurisdiction, is it enforceable
18 with respect to your right to or the assertion of a privilege
19 or a right here within the United States relative to being
20 compelled to testify or provide any kind of testimonial aspect
21 in this proceeding?

22 So if you have -- and I don't know the answer to that.
23 I have looked pretty hard. But certainly domestically
24 asserting a Fifth Amendment because there is a potential
25 domestic criminal proceeding is a nonevent, that's a loser.

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1 But if you have an equivalent right within another
2 jurisdiction, can you then present that claim here and have it
3 enforced? And that's an issue for us that I think needs to be
4 decided. These matters, most of this is public record, but --

5 THE COURT: What is public record?

6 MR. HANAMIRIAN: Most of what I am seeking to protect
7 as against with respect to some other clients that I represent
8 is a matter of -- the fact of investigations in other
9 jurisdictions, foreign jurisdictions, is a public record. But
10 I have to be sensitive to disclosure in the context of this
11 environment, but at the same time I have to protect my client.
12 So I can follow Mr. Allison and his defendants to a certain
13 extent, and certain other certain areas I already know I can't.

14 THE COURT: For example?

15 MR. HANAMIRIAN: For example, just even proceeding
16 with respect to testimony, in deposition testimony, will my
17 people be produced or will any of my persons be produced for a
18 deposition? Well, I have some issues with some of that, and so
19 I am going to present some reasons why not in the form of a
20 motion or otherwise. So I have to deal with that.

21 When you have parallel civil and criminal proceedings,
22 we have parallel civil and criminal proceedings in this case,
23 let alone in the other jurisdictions that I --

24 THE COURT: What criminal proceedings are you talking
25 about?

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1 MR. HANAMIRIAN: In the motion to seal where there is
2 an assertion with respect to the existence of the criminal
3 proceeding in Denmark and a criminal investigation. So I have
4 got to deal with that.

5 Certainly, Mr. Allison's clients have similar concerns
6 with respect to the existence of a criminal investigation, but
7 I have potentially further concerns with respect to maybe one
8 or more of those clients with respect to the impact of this
9 proceeding on other criminal investigations.

10 THE COURT: What do you conceive the effect of
11 designating a lead counsel here would be?

12 MR. HANAMIRIAN: I don't necessarily know the answer,
13 your Honor.

14 THE COURT: Neither do I. We are going to talk about
15 that.

16 MR. HANAMIRIAN: I wanted to be heard with respect to
17 it because I just don't think that this is the kind of case
18 where you can go forward and say like the analogy I gave as far
19 as a civil claim with respect to an MDL.

20 THE COURT: What do you think we should do, have 140
21 different motions for a protective order, 140 different sets of
22 interrogatories? I don't think we are going to do that.

23 MR. HANAMIRIAN: No. If I have to be an outlier, your
24 Honor, or if I end up being an outlier on it, I just want to
25 assure that that status is available. So we don't know

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1 necessarily what it means to be lead counsel in this case, and
2 I can't really find out.

3 THE COURT: Perfectly fair comment. And of course you
4 can't because we haven't fleshed it out yet.

5 MR. HANAMIRIAN: So before it gets to that stage, I
6 wanted to be heard. Again, it's not about Mr. Allison. I like
7 Mr. Allison; competent firm, competent people. It's not that.
8 It's a factor that -- I'm a defense attorney. I can't sit
9 still and watch the case go by my people.

10 THE COURT: Of course. But there is a question of how
11 the case gets organized, what gets done first, what gets done
12 later, how we manage discovery where you have 140 different
13 defendants, all of whom probably want to do different things if
14 left to their own devices. That's not practical.

15 MR. HANAMIRIAN: I think that there are some who will
16 need to follow suit with respect to what either I or someone
17 else in this role would present and others who need to become
18 outliers. The difficulty from my perspective in identifying
19 particular defendants or particular counsel as outliers is that
20 I think it creates a magnifying glass on those persons for
21 purposes of the plaintiff's focus, right? And so then my fear
22 or my concern with respect to --

23 THE COURT: You want to have it both ways. You want
24 to hide in the weeds, except when you don't want to hide in the
25 weeds.

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1 MR. HANAMIRIAN: But isn't that a good defense
2 attorney? My concern with respect to even the case proceeding
3 forward beyond the motion to dismiss stage is just this. We
4 are now in a posture where essentially you're forcing the
5 defendants to kind of come out of those weeds. And that's fine
6 for the purpose of the civil case, but I don't think that you
7 can conduct a criminal investigation in Denmark through this
8 civil case and say, OK, we will sue everyone, and just kind of
9 see who is left standing when the music stops, right?

10 So that's really what is kind of happening. I
11 anticipated not suggesting that I have some superior skill, but
12 I anticipated it might happen. So now, if we are in it, we are
13 in it, and now I have to deal with it. So ultimately, if it's
14 not today, it's going to be during the course of this discovery
15 process that certain persons that I represent, and their roles
16 with respect to this, both domestically and otherwise in this
17 case, will be identified, and I have to deal with it. I don't
18 want it to be the first time that you hear it at that time. I
19 wanted the first time that you heard it to be today.

20 THE COURT: Thank you.

21 Mr. Allison.

22 MR. WEINSTEIN: Your Honor, can I just raise one
23 procedural issue?

24 THE COURT: Sure.

25 MR. WEINSTEIN: I think when the case was called

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1 today, it was called with respect to the defendants who
2 originally had been sued in the Southern District. My
3 understanding is we are here on all the cases. I just want to
4 make sure that all defendants, because I think there are some
5 other defendants who may have different attorneys, I just want
6 to make sure everyone on that side is represented and is or can
7 participate in this lead counsel decision.

8 THE COURT: Of course.

9 Has everyone had notice?

10 MR. WEINSTEIN: I believe the court's --

11 THE COURT: I don't have it in front of me. I have
12 just come off close to two months of trial.

13 MR. WEINSTEIN: I believe that is the case, your
14 Honor.

15 THE COURT: Fine.

16 Mr. Allison.

17 MR. ALLISON: Thank you, your Honor.

18 I don't have a grand speech here. The proposal I
19 think for lead counsel, and I think the reason why I was
20 suggested by among the other defense counsel to have this role
21 is obviously we have the largest group of cases that we are
22 representing, and I can say I hope, without misrepresenting
23 anything, that we have a good working relationship with all the
24 defense counsel. We have worked and coordinated together in
25 the almost six months that these proceedings have been ongoing.

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1 We have coordinated on common defense positions, and I respect
2 Mr. Hanamirian's concerns. There are, obviously, differing
3 views about different positions, and there will come different
4 points in time where we will differ, and there may be a need
5 for a different position to be taken for a specific group of
6 defendants.

7 The way I understood the lead counsel role to work,
8 even though there is not any particular precedent that I am
9 aware of, is really as a coordinator, sort of a quarterback, to
10 make sure that we have common singular filings that are made to
11 the extent possible, and where that is not possible to flag
12 that for the court. That has been the role that we have
13 envisioned. We have managed it so far in the first six months,
14 and again, without going out on a limb here, I have had I think
15 a good working relationship with plaintiff's counsel, and I
16 hope and expect that that would continue, again, on behalf of
17 all defendants where possible. And I would just hope to
18 continue sort of playing that role.

19 THE COURT: This, of course, is very unlike any of the
20 other MDLs I have done because the plethora of parties is on
21 the defense side, not on the plaintiff's side, and it is not a
22 representative action. And that, of course, necessarily means
23 that there is a possibility, probably quite significant, that
24 there will be some variation of positions among the defense
25 group. And my conception for the role of lead counsel is very

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1 tentative and very general at this moment, but it's going to
2 need to become more specific.

3 Now, I went forward in the way I did, without trying
4 to firm up what the role is exactly, because I wanted to see if
5 there was a consensus on an individual or a group that would
6 function.

7 Now, it is, of course, very important that the lead
8 counsel communicate with all defense counsel and that there be
9 an attempt to reach common positions to the extent that's
10 possible. I wanted to see really, when I put out the notice,
11 whether we had one person or some small representative group,
12 and basically what I got back is that everybody is content
13 with, at least at this point, you performing that role on your
14 own, obviously talking to everybody all along. And then there
15 is Mr. Hanamirian's position, which although I understand the
16 sensitivity he has, I don't have enough information to
17 understand. It's not his fault. He has obligations to his
18 clients and feels he can't tell me more today without letting
19 some cat, in a very prejudicial way, out of the bag. I don't
20 know if that's true or not. I accept his judgment. So we will
21 go forward on the basis of one, at least for now, and it's you.

22 The next thing is I think we have to put some flesh on
23 the bones. We need to develop a form of an order that says
24 what it is you are supposed to do and not do, and I think it
25 needs also to address the question of who is paying for it, to

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1 the extent that it is not your clients.

2 Now, I don't remember any longer how many of these
3 cases you have.

4 MR. ALLISON: It's roughly 104 or so, give or take.

5 THE COURT: So this may not be an issue. I remember
6 when I was a far younger lawyer, we were counsel in an
7 antitrust case with 63 defendants, and my firm represented
8 General Motors, back in the day when there were no Japanese
9 companies that were significant or German companies significant
10 in the US automobile industry, and General Motors just paid for
11 whatever coordination and that kind of work that there was.
12 And if your clients are happy to do that, that's fine, and if
13 not, we have to address it. And maybe they are. I am not
14 asking right now, but maybe they are.

15 So I think the next step here is that we need to
16 develop a form of order that will specify the role of lead
17 counsel. Obviously, coordination of discovery is high on the
18 list. I do not foresee, at least at the present time, having
19 each of 140 defendants in the position of starting its own
20 discovery program against the plaintiffs or anybody else.
21 There will be, in my conception, at least a proposal on behalf
22 of a substantial majority of the defendants in the case for
23 what they think should be a common staging of discovery and who
24 is going to take responsibility for that.

25 Now, that's not to say that any defendant would be

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1 foreclosed from asking non-repetitive questions at a
2 deposition, but the conception is there will be one deposition
3 of a witness, just to take that as an example, and you can play
4 that out across documents and admissions and interrogatories
5 and everything else. I can see an analogue to that to motion
6 practice.

7 So I am looking to counsel to propose a structure now
8 to how we manage this case. And that will take, I imagine, a
9 fair amount of consultation among counsel to come up with
10 something that at least most, and hopefully everybody, can sign
11 on to that will protect the court's interest in an economic or
12 an efficient way of addressing the litigation, and an
13 expeditious way, if I didn't say that, while respecting the
14 rights of people with divergent interests.

15 So do you have a suggestion for how we go about that?

16 MR. ALLISON: Well, your Honor, yesterday, I believe
17 it was, I had a sort of preliminary conversation with
18 plaintiff's counsel, not specifically anticipating your ruling
19 on the lead counsel role, but just to start the conversation
20 about how we are going to make this process more efficient in
21 both directions, because likewise I understand 140 depositions
22 of the same witness for the plaintiff makes no sense.
23 Likewise, we would have concern of 140 individual separate
24 depositions in the other direction. That may or may not make
25 sense given that there is probably some overlap in information

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1 and knowledge and testimony.

2 THE COURT: Forgive me for interrupting. It would not
3 surprise me, although I don't know, if these 140 defendants
4 don't fall into some finite group of categories that have a
5 good deal in common with one another and are differently
6 situated from other groups of defendants, and maybe there is a
7 way of approaching that that would be cost-effective.

8 MR. ALLISON: That's exactly what we were thinking,
9 your Honor. At the same time, and to be transparent about it,
10 obviously defendants have an equal concern about the fact that
11 we have a potential duplicative process ongoing in Denmark, and
12 we want to figure out a way to -- not take advantage, but to
13 recognize that information is being provided now potentially in
14 two different jurisdictions that may itself overlap, and there
15 may be a way to make that process more efficient in utilizing
16 the information that is going in both jurisdictions.

17 So, again, just very tentatively, we have talked about
18 having a meeting next week after the holidays to try to start
19 contemplating a little bit more about that and how to bring
20 this into reality.

21 THE COURT: So what sort of a timetable seems to you
22 to make sense to expect defendants, in collaboration with the
23 plaintiffs, to have a proposal about an order regulating the
24 lead counsel role and how we are going to manage this case?

25 MR. ALLISON: I am completely speculating, your Honor,

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1 but given the holidays, this week we are talking really
2 about --

3 THE COURT: Tough time of the year.

4 MR. ALLISON: I am going to guess a good goal would be
5 before the Christmas holiday to have a sort of more concrete
6 plan that encompasses both the lead counsel role and sort of a
7 game plan for general approach with the plaintiff.

8 THE COURT: All right. That makes sense to everybody?
9 Does anybody else want to be heard on this?

10 OK. So let's set the target date for proposal for
11 December 18. How's that?

12 If anybody wants to respond to whatever that proposal
13 may be, maybe Mr. Hanamirian is going to want to respond, just
14 maybe -- just guessing, Mr. Hanamirian -- let's look at a date.

15 How about January 11, taking account of the holidays,
16 for any response?

17 And then let's put down a conference for 9:30 on
18 January 24 in all the cases, but this is the subject: How
19 would we be organizing this case going forward and whatever the
20 views are about the various proposals. OK?

21 Sir.

22 MR. WEINSTEIN: Thank you, your Honor.

23 So we will obviously work with defendants to try to
24 come up with a reasonable proposal to manage the case. In the
25 meantime, one, because we are talking about a conference two

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1 months out, let me just revisit what had happened at the
2 initial conference about at least document production in the
3 case.

4 We had served, with your Honor's permission, document
5 requests, at least on the Southern District defendants as they
6 then existed. The defendants, consistent with your Honor's
7 order, responded with respect to objections and those types of
8 responses, but did not produce documents because your Honor had
9 said they should not until your Honor had decided it was time
10 to move that forward. In our view it's time to move that
11 forward, at least, and not have another two months go by
12 without that process going. So we would propose that for those
13 who have already responded and said they will produce
14 documents, notwithstanding their objections, that should now
15 happen. We will serve the remaining defendants with document
16 requests, let them respond and ultimately produce. So that's
17 with respect to documents.

18 I think the only other issue raised by what has been
19 discussed here today is there was a prior case management order
20 on some of the issues, it's pretrial order number 1, which has
21 certain dates in it that I think should be at least put off for
22 now, or ultimately decided what to do with those. For example,
23 there is a discovery cutoff date. More pressing for us, there
24 is a date on which no additional parties may be joined, and
25 that's January 20. So I think it would make sense for us to,

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1 one, work with defendants on how the case will be managed.

2 THE COURT: Those two dates are adjourned sine die.

3 Anybody want to be heard on whether the defendants
4 should not begin to produce documents?

5 MR. WEINSTEIN: Let me just add, there was a third
6 date. In the prior order, there are dates such as March 31 for
7 the amendment of pleadings. Perhaps we can just be on the
8 working assumption that there will be in the future, perhaps
9 after the January 24 conference, a new scheduling order with
10 all dates.

11 THE COURT: That's adjourned too.

12 Mr. Allison.

13 MR. ALLISON: In terms of discovery, I certainly
14 understand plaintiff's request. We would prefer, however, to
15 wait until we have had an opportunity to confer with plaintiff
16 about the overall case management, including as it relates to
17 discovery, before we begin that process, because the effort
18 involved in this kind of a production is not easy, and if there
19 is a way to make it more efficient, I'd rather figure that out
20 first than start engaging in that difficult task.

21 THE COURT: Well, the plaintiff has a universe of
22 documents that it wants from every defendant, and I imagine
23 they are the same.

24 Are they the same, requests the same?

25 MR. WEINSTEIN: Yes.

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1 THE COURT: OK. The defendants, I imagine, are going
2 to wind up negotiating those requests. You have made some
3 objections. But to the extent you haven't objected, I see no
4 reason why the documents shouldn't now be produced. And to the
5 extent you work it out, no reason why they shouldn't be
6 produced. And if there is some subset as to which there are
7 objections, no reason why we shouldn't get the objections
8 brought before the court.

9 MR. ALLISON: Your Honor, there were objections that
10 were served on plaintiff on behalf of all of the Southern
11 District defendants. They were extensive, as you would expect.

12 THE COURT: I haven't spent almost 50 years doing this
13 in New York without knowing that.

14 MR. ALLISON: Of course, your Honor.

15 It does require some negotiation or resolution with
16 plaintiff, both because of the volume and because of the nature
17 of the information to produce. That's why it's got to be
18 worked out first.

19 THE COURT: So get to work on it. To the extent there
20 is material that's been requested as to which there is no
21 objection, it's to be produced. And as you work out the
22 objections, and I hope I don't have to work out the objections,
23 but I will if I have to, and what usually happens then is
24 nobody is happy. That's all there is to it. There is no
25 discovery stay with respect to plaintiff's document discovery.

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1 MR. ALLISON: OK, your Honor.

2 THE COURT: Anything else this morning?

3 MR. WEINSTEIN: Not from plaintiff, your Honor.

4 THE COURT: Sir, you are?

5 MR. BLESSINGTON: John Blessington.

6 I should say long-time listener, first-time caller.

7 THE COURT: Mike and the Mad Dog.

8 MR. BLESSINGTON: There you go.

9 Your Honor, it doesn't just concern me, but this is
10 our first time before you. As I said, we represent plans and
11 defendants from Utah as well as from Pennsylvania. I
12 understand there are also plans in Massachusetts, Illinois,
13 Florida. We are all now before you. There are motions to
14 dismiss in those other states, in those other jurisdictions. I
15 guess my question is something that may ultimately get ironed
16 out, but I didn't know how the Court was going to handle those
17 non-SDNY motions to dismiss.

18 THE COURT: My intention is that when I issue a
19 decision, I will probably issue an order to show cause why that
20 shouldn't control in all the other cases, and everybody will
21 have an opportunity to tell me at that point that they are
22 unique and different and should take another bite at the apple,
23 and the plaintiff will probably have a different view, and I
24 will sort them out.

25 MR. BLESSINGTON: I appreciate that, your Honor.

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1 We served yesterday just a letter. We are sort of in
2 a unique situation. The one plan in Pennsylvania, we have yet
3 to file, for reasons I explained in the letter, we have yet to
4 file a motion to dismiss, in part because of negotiations with
5 SKAT over what would be the scope of that motion, but also
6 because of the procedural posture of the case at the time we
7 were due to file it. At that point, the MDL was granted, and
8 then the case was closed and you had issued your stay. So I
9 would just simply ask that at some point we be allowed to file
10 that motion in the MDL docket and have it considered with all
11 the other non-SDNY plans, or motions I should say, your Honor.

12 THE COURT: How is it different from the motion that I
13 have before me?

14 MR. BLESSINGTON: Other than Pennsylvania law applies
15 when we are dealing with the 9(b).

16 THE COURT: How does Pennsylvania law apply when you
17 deal with the 9(b)?

18 MR. BLESSINGTON: Let me back up, your Honor. The
19 reason that we didn't file initially is that Pennsylvania,
20 believe it or not, has a two-year statute of limitations
21 dealing with fraud claims. And under Third Circuit law, if
22 there is a date in the complaint, as there is in the complaint
23 in Pennsylvania, as there is in all of the complaints, in which
24 they identify when they first learned of the alleged fraud and
25 it's outside the statute of limitations, then it can be raised

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1 in a 12(b)(6) context.

2 THE COURT: That's not Pennsylvania law. That's
3 federal law.

4 MR. BLESSINGTON: Of course. But it's a two-year
5 statute of limitations, which, to be completely candid, I
6 didn't know there was a state that had such a short trigger on
7 a fraud claim.

8 We brought that to SKAT's attention, and there were
9 negotiations back and forth. We asked them, frankly, to
10 voluntarily withdraw those claims, and we just learned
11 yesterday that they have agreed to do so.

12 I am not challenging, your Honor, nor would I ever,
13 your approach with the show cause. We simply just haven't
14 filed it, and I just want to make sure we get it on file
15 because it hasn't been filed. Because it would have been filed
16 in the Eastern District of Pennsylvania, but then the MDL got
17 granted. Actually, Ms. Cave requested that all dates be
18 suspended. You endorsed that. And then you issued a pretrial
19 order form, which you formally stayed all motions to dismiss.

20 THE COURT: Look, if you want to file it, go ahead and
21 file, and I will probably stay it.

22 MR. BLESSINGTON: That's what I am addressing, your
23 Honor.

24 THE COURT: What is the need to file it now if it's
25 stayed? How are you prejudiced by not putting it on file?

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1 MR. BLESSINGTON: I am not saying I am prejudiced. I
2 just want to get it on file so whatever order you issue will
3 apply to that motion as well. I didn't do a very good job in
4 explaining.

5 THE COURT: That's fine.

6 MR. BLESSINGTON: Thank you, your Honor. That was the
7 only issue.

8 THE COURT: Anything else?

9 All right. Thank you, all.

10 (Adjourned)
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